

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Pablo Flores-Torres
81 Belchertown Road, Apt. 79
Amherst, MA 01002

Date application filed with the Town Clerk: November 21, 2008

Nature of request: Special Permit to establish a Class II restaurant under Section 3.352.1 of the Zoning Bylaw.

Address: 460 West Street (Map 20C, Parcel 9, B-VC Zone)

Legal notice: Published on November 19 and November 26, 2008 in the Daily Hampshire Gazette and sent to abutters on November 20, 2008.

Board members: Thomas Simpson, Hilda Greenbaum, Eric Beal

Submissions: The petitioner submitted a packet of information with the application including:

- Completed Application form;
- A site plan showing existing building and parking;
- A floor plan dated August 2, 2008;
- A Management Plan dated November 4, 2008;
- A copy of a lease dated March 18, 2008;
- A sign plan including the south facing elevation and pole sign;
- A sample menu dated November 4, 2008;
- A series of seven (7) aerial photographs of the property;
- Town GIS Zoning Map (submitted by staff);
- A copy of Special Permit ZBA FY93-30 for the Amherst Fish Market and Special Permit ZBA FY97-0034 (Apollo II), ZBA FY9-0018 (Anita's), and ZBA FY2001-00019 (Karen's Kitchen) for the space now occupied by Zhang's Kitchen (submitted by staff).

Site Visit: December 3, 2008

Thomas Simpson and Hilda Greenbaum met with the applicant, Pablo Flores-Torres, at the site (Eric Beal viewed the site separately) and observed the following:

- The existing commercial building containing a gym, bar, restaurant, barber shop and retail uses situated on the east side of West Street with access from West street and Pomeroy Lane;
- There is a multi-unit residential housing development to the east, Hess gas station and West Street (Rt. 116), and a vacant parcel to the north;
- The parking spaces located immediately in front of the proposed restaurant;
- The additional parking spaces and location of dumpsters at the north side of the building;
- The interior of the commercial space including the food service area, kitchen, back room and exits.

Public Hearing: December 4, 2008

The applicant, Pablo Flores-Torres, presented information related to the application. Mr. Torres stated the following:

- He would like to open a restaurant at 460 West Street;
- The food will be Hispanic and Caribbean influenced and will be take-out and delivery;
- There will be no sit-in dining due to Building Code requirements for the number of bathrooms;
- There will be no outdoor dining;
- Food delivery will be done by two drivers;
- There are parking spaces available on the property for use by the restaurant patrons and employees;
- The inside of the restaurant will have a steam table for food;
- The restaurant is intended to serve the Amherst area primarily, but will deliver to surrounding communities such as South Hadley and Sunderland.

Mr. Simpson asked what the hours of operation would be. The applicant explained the hours of operation will be Monday through Wednesday from 7 a.m. to 11:00 p.m., Thursday through Saturday from 7 a.m. to 2 a.m., and Sundays from 7 a.m. to 1:00 a.m. He added that take-out service will end at 11:00 p.m. daily and delivery will be from 4 p.m. to close daily.

Mr. Simpson noted that the Management Plan states that delivery will be from 4:00 a.m. to close and asked the applicant if it was a misprint. The applicant confirmed that the delivery would be from 4 p.m. to close everyday.

Mr. Simpson asked the applicant what hours vendors would be delivering goods. The applicant responded that the deliveries would occur during non-peak hours of the morning, approximately between 7 a.m. and 11 a.m. The applicant showed the Board the delivery area as shown on the site plan.

Mr. Simpson asked if there were more than two delivery drivers, where would they park. The applicant responded that he does not expect to have more than 2 delivery drivers but any additional drivers could park in the spaces along the north property line, as shown on the site plan.

Mr. Simpson asked if there would be any signs. The applicant responded that there would be parking signs posted for the two five minute customer parking spaces and the two delivery driver parking spaces, as shown on the site plan. He added that there will be two signs associated with the restaurant and referred to the sign plans submitted. He said that one sign will be on the front facade of the restaurant and the other will be mounted on the existing pole sign adjacent to West Street.

Mr. Simpson asked about the size of the sign to be on the existing pole sign. The applicant stated that the sign on the pole will be 4 feet in diameter as described in the management plan. The wall-mounted sign will be 5' $\frac{3}{4}$ " tall by 6' $\frac{1}{2}$ " wide as shown on the sign plans.

Ms. Weeks noted that the wall-mounted sign appears to meet the maximum size limit of 10% of the wall area as per Section 8.20 of the Zoning Bylaw. However, she stated that the signage on the pole is probably in excess of the maximum allowed for the parcel. She added that if the Board decided to approve the application, the Special Permit should also approve the signs as submitted so that the applicant does not have to come back to the Board.

Mr. Beal asked for confirmation of the size of the sign to be mounted on the pole. The applicant responded that the size would be 4 feet in diameter.

Ms. Greenbaum asked the applicant where the rubbish would be stored. The applicant responded that all trash will be placed in a locked dumpster in the location shown on the site plan.

Ms. Greenbaum asked the applicant where the waste cooking oil will be stored and how often it will be picked up. The applicant responded that the oil will be stored in a 55 gallon metal container which will be either placed inside or outside and that it will be picked up as needed by a local person who will use it to make biodiesel fuel.

Ms. Greenbaum noted that the application packet was very well prepared and useful.

The applicant noted that there are marked parking spaces along the north property line that will be used for employee parking.

Ms. Weeks noted that the Board might wish to discuss lighting and the placement of trash receptacles immediately outside the restaurant.

Mr. Simpson asked the applicant about lighting. The applicant responded that there are three lights on the front of the building that are area lighting for the exterior of the building; one may be used to light the sign.

Mark Parent for the Town's Commercial Relations Committee was present.

Ms. Greenbaum made a motion to close the public hearing. Mr. Beal seconded the motion and the Board voted unanimously to close the public hearing.

Public Meeting:

Mr. Simpson asked the Board members they had any objections to the application in principle. The Board members had no objections.

Mr. Simpson discussed with the Board allowing the hours of operation to be simplified to be allowed from 7 a.m. to 2 a.m. seven days a week. This would include both the take-out and delivery to operate during these hours. Mr. Simpson added that the hours are appropriate due to its proximity to the 24 hour Hess gas station.

Ms. Weeks noted concern regarding the storage of waste oil inside the building. She added that the oil should be stored inside in accordance with Fire Department regulations or outside secure from vandalism or animals.

The Board stated that the applicant would need to come back to the ZBA, for a Public Hearing, if sit down seating is considered.

The Board spent the remainder of the time during the public meeting discussing conditions for granting the Special Permit.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses in the district because the restaurant is situated within a commercial building containing adequate parking and associated facilities and that already contains similar uses.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures; will not be a substantial inconvenience or hazard to abutters; and reasonably protects adjoining premises because the restaurant is situated in a building already containing similar uses, all lights will be downcast and there will be no outdoor dining on the premises.

10.384 and 10.387 - Adequate and appropriate facilities will be provided for the proper operation of the use and will provide convenient and safe movement because the restaurant is contained within the space previously used for food preparation and the property contains adequate parking for the take-out and delivery services.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw because the property contains adequate parking in accordance with Section 7.0031 of the Bylaw. The wall-mounted sign is in accordance with 8.20 of the Bylaw and the size of the pole-mounted sign was approved as per the Management Plan.

10.388 - The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use because all vendor deliveries will occur at off-peak hours and within the area designated on the site plan.

10.393 -The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all new lighting will be downcast and other lighting is associated with the wall mounted signs and lighting of the entry way.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting - Zoning Board Decision:

Mr. Simpson made a motion to APPROVE the application with conditions. Ms. Greenbaum seconded the motion.

For all the reasons above, the Board VOTED unanimously to grant a Special Permit to establish a Class II restaurant, to be known as Latino's, with take-out and delivery service under Section 3.352.1 of the Zoning Bylaw, as applied for by Pablo Flores-Torres, at 460 West Street (Map 20C, Parcel 9, B-VC Zone), with conditions.

THOMAS SIMPSON

HILDA GREENBAUM

ERIC BEAL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to establish a Class II restaurant, to be known as Latino's, with take-out and delivery service under Section 3.352.1 of the Zoning Bylaw, as applied for by Pablo Flores-Torres, at 460 West Street (Map 20C, Parcel 9, B-VC Zone), with the following conditions:

1. The hours of operation of the restaurant, including take-out and delivery service, shall not exceed 7:00 a.m. to 2 a.m., seven (7) days a week;
2. There shall be no indoor or outdoor dining on the premises;
3. The layout of the restaurant shall be in accordance with floor plan dated August 2, 2008 and approved on December 4, 2008;
4. The restaurant shall be managed in accordance with the Management Plan approved on December 4, 2008;
5. The wall mounted sign and pole mounted sign shall be in accordance with the plans submitted and as described in the Management Plan approved on December 4, 2008. Any changes to the signs shall be submitted and approved by the Board at a public meeting;
6. Parking for patrons and employees shall be as shown on the site plan and in accordance with the Management Plan approved on December 4, 2008;
7. All trash shall be stored in a locked dumpster located in the area shown on the site plan and in accordance with the Management Plan approved on December 4, 2008;
8. There shall be no more than 10 employees during any one shift;
9. All waste kitchen oil shall be stored in a 55 gallon drum or other appropriate container and shall be kept either inside the building, in accordance with all applicable Fire and Health Department standards, or outdoors in a secured container and protected from theft, vandalism, and intrusion by animals. Stored oil shall be picked up as needed to prevent spoilage, and the storage area shall be regularly cleaned;
10. All Vendor deliveries shall be made between 7 a.m. to noon, Monday through Friday;
11. The volume of all pre-recorded music shall be set so that it cannot be heard outside the building;
12. Any new exterior lighting added shall be downcast;
13. There shall be one trash receptacle located outside near the front door which shall be maintained and emptied as needed;
14. This permit shall expire upon change of ownership of the business.

Thomas Simpson, Chair
Amherst Zoning Board of Appeals

DATE